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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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DAVID HAWKINS and KIM  
HAWKINS, and TYLER HAWKINS,  
ASHLEY HAWKINS, and CHASE  
HAWKINS, Minors, by and  
through their next friend, DAVID HAWKINS,

CATHY S. GATSON, CLERK  
KANAWHA CO. CIRCUIT COURT

Plaintiffs,

v.

Civil Action No. 06-C-1404  
Honorable Jennifer Bailey

Walker

THE WEST VIRGINIA DEPARTMENT OF  
PUBLIC SAFETY, a/k/a THE WEST VIRGINIA  
STATE POLICE, THE COMMISSION ON  
DRUNK DRIVING PREVENTION, and  
J. MATTMAN SECURITY, INC., d/b/a  
THE MATTMAN COMPANY,

Defendants.

**ORDER GRANTING MOTION TO DISMISS OF DEFENDANTS**

On the 7<sup>th</sup> day of March, 2007 came the parties, by and through counsel, for argument upon defendants, the West Virginia Department of Public Safety a/k/a the West Virginia State Police, the Commission on Drunk Driving Prevention's (sic) Motion to Dismiss. Upon reviewing the parties' briefs and hearing oral arguments from counsel, the Court makes the following findings of fact and conclusions of law:

**Findings of Fact and Conclusions of Law**

Plaintiff David Hawkins, formerly a Sergeant with the West Virginia State Police, filed suit against the Department of Public Safety a/k/a the West Virginia State Police, the Commission on Drunk Driving Prevention and J. Mattman Security Inc. d/b/a the Mattman Company.

1. The West Virginia Department of Public Safety has been renamed the West Virginia State Police. To the extent, plaintiffs intend to name the Department of Military Affairs and Public Safety [DMAPS] that agency is not a proper party to this suit. W.Va. Code §15-2-1 et seq. Plaintiffs accordingly voluntarily dismissed the Department of Public Safety.

2. The defendant, Commission of Drunk Driving was created within the West Virginia State Police in accordance with W.Va. Code §15-2-40. The powers of duties of the commission are as enumerated in West Virginia Code §15-2-41. As it is not an agency that can sue and be sued but rather a commission within the agency, this Court's findings of fact and conclusions of law operate to extinguish any purported claim against the Commission as such a claim is actually a claim against the agency, the West Virginia State Police.

3. With respect to the defendant, West Virginia State Police, plaintiff David Hawkins, a former West Virginia State Trooper, alleges that he sustained personal injuries in the course and scope of his employment with the State police and claims that his injuries were the result of the department's negligence in failing to repair a defectively designed vehicle.

4. The only claim against the movant defendant is negligence.

5. The plaintiffs' Complaint fails to state a cause of action against the movant defendants upon which relief can be granted, as the employer, the West Virginia State Police can not be subjected to common law claims sounding in negligence by its employee for injuries sustained on the job.

6. Dismissal for failure to state a claim is proper where it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. W.Va. R. Civ. P. 12(b)(6). Estate of Hough ex rel. Lemaster v. Estate of Hough ex rel. Berkley County Sheriff, 519 S.E.2d 640, 205 W.Va. 537 (1999).

7. The West Virginia Workers' Compensation system exists to the benefit of both employers and employees, freeing employers from lawsuits for simple negligence while ensuring employees compensation for their work-related injuries. Repass v. Workers' Comp. Div., 569 S.E.2d 162 (W.Va., 2002).

8. W.Va. Code §23-2-6, provides that employers subject to this chapter are not liable to respond in damages at common law. Accordingly, an employer is insulated against liability to an employee for negligence by the provisions of W.Va. Code § 23-2-6. Halstead v. Norfolk & W. Ry., 236 F. Supp. 182 (S.D.W.Va. 1964).

9. The relevant statute, West Virginia Code §23-2-6, does indeed strip some employers of the statutory immunity provided by §23-2-8 but not "the State of West Virginia, the governmental agencies or departments created by it." W.Va. Code §23-2-8; see also §23-2-6.

10. W.Va. Code §23-2-8 provides in pertinent part as follows:

"[a]ll employers required by this chapter to subscribe to and pay premiums into the workers' compensation fund, except the state of West Virginia, the governmental agencies or departments created by it, and municipalities and political subdivisions of the state, and who do not subscribe to and pay premiums into the workers' compensation fund as required by this chapter and have not elected to pay individually and directly or from benefit funds compensation and expenses to injured employees ..... or not having fully

complied with the provisions of [23-5-9] of this article, shall be liable to their employees (within the meaning of this article) for all damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer[.]

11. While the State Police did not pay into the Workers' Compensation Fund on behalf of plaintiff David Hawkins, it did provide benefits, according to its statutorily created and authorized compensation system, for the on-duty injuries of its law enforcement officers. See W.Va. Code §15-2-1 et seq.. The West Virginia State Police has elected to and is authorized to make direct payments of compensation.

12. There is no dispute that plaintiff David Hawkins is actually receiving those benefits.

13. While uniformed members of the West Virginia State Police are not eligible for coverage under the Workers' Compensation System they are covered under the Death, Disability and Retirement Fund. See Beckley v. Kirk, 455 S.E.2d 817 (1995).

14. To construe the language of the Workers' Compensation Act read in pari material with the Death, Disability and Retirement Fund provisions as permitting a common law cause of action for uniformed members against the State Police for injuries sustained during the course and scope of employment would be contrary to the letter and intent of the Act. To construe the statutes to permit such a common law cause of action would result in an absurdity.


15. Accordingly, the reasonable construction of the statutes provides statutory immunity to the West Virginia State Police for injury claims of

its uniformed members sustained in the course and scope of their employment with the State police.

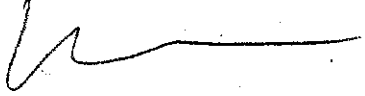
WHEREFORE this Court ORDERS that the Motion to Dismiss of defendants, West Virginia Department of Public Safety a/k/a the West Virginia State Police, the Commission on Drunk Driving Prevention, is hereby GRANTED.


The exceptions and objections of counsel are hereby noted.

ENTERED THIS 19<sup>th</sup> DAY OF April, 2007.

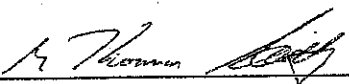
  
HONORABLE JENNIFER BAILEY WALKER

Prepared and submitted by:

  
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STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 23  
DAY OF April, 2007  
  
CATHY S. GATSON, CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 24

Inspected and approved by:

  
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